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UNITED STATES DISTRICT COURT

District of Nevada

In re:) Case No. 2:07-CV-892-RCJ-GWF-BASE
) and
USA COMMERCIAL MORTGAGE COMPANY,) Case No. 3:07-CV-241-RCJ-GWF
Debtor.)
<hr/>) ORDER APPROVING SETTLEMENT OF
) MOTIONS FOR AN ORDER TO SHOW
3685 SAN FERNANDO LENDERS, LLC, <i>et al.</i>,) CAUSE WHY SILAR AND ITS
) PRINCIPALS SHOULD NOT BE HELD IN
Plaintiffs,) CONTEMPT OF COURT
)
v.)
)
COMPASS USA SPE LLC, <i>et al.</i>,)
)
Defendants.)
)

1
2 At the hearing on Movants' Motions for an Order to Show Cause Why Silar and its
3 Principals Should Not Be Held in Contempt of Court [Doc. ##1811, 1822] (the "Motions") held
4 March 1, 2011, counsel for Movants and the below listed Respondents announced on the record a
5 settlement of those Motions, as well as any motions for sanctions that were or could be brought
6 against Movants and their below listed counsel in connection with the Motions. As further stated on
7 the record, that settlement include the following provisions:
8

9 1. The Motions are dismissed with prejudice only as to the below listed Respondents.
10 Any motions for sanctions that were or could be brought against Movants and their below listed
11 counsel in connection with the Motions are also dismissed with prejudice.
12

13 2. The settlement between Movants and the below listed Respondents does not
14 constitute an admission of liability by either Movants or the below listed Respondents.

15 3. The below listed Respondents shall wire the total amount of \$1,415,572.26 to the
16 IOLTA account of Bickel & Brewer. That sum includes the \$950,49.83 at issue in Doc. #1811; the
17 \$375,112.43 at issue in Doc. #1822; and \$90,000 to Movants for attorneys' fees and for distribution
18 costs to direct lenders. The below listed Respondents shall bear their own attorneys' fees and costs.
19

20 4. Other than the \$90,000 paid to Movants, none of the remaining \$1,415,572.26 held in
21 the IOLTA account of Bickel & Brewer shall be disbursed except upon further order of the Court.
22 Beginning April 1, 2011, Bickel & Brewer shall provide a monthly bank statement of the monies
23 related to the Motions that are being held in its IOLTA account to counsel for the below listed
24 Respondents.

25 5. Movants and the below listed Respondents agree that upon the determination by
26 Movants as to which direct lenders and in what amounts any of the loan-specific monies at issue in
27 Doc. ##1811 and 1822 (*i.e.*, 60th Street (\$231,350.73), Anchor B (\$375,112.43), BarUSA
28 (\$2,004.31), Bay Pompano (\$54,420.59), Cornman Toltec (\$10,262.98), The Gardens (\$183,544.37),

1 Gramercy (\$132,178.51), and San Fernando (\$21,544.47)) shall be disbursed, they will file with the
2 Court a stipulation and order authorizing Bickel & Brewer to disburse those monies from its IOLTA
3 account. It is not a condition precedent to the filing and entry of that stipulation and order that a
4 forensic accounting for any other loan or account be completed.

5
6 6. Movants shall be entitled to undertake a comprehensive forensic accounting of any
7 and all monies, from any source (including, but not limited to, rents, partial releases of condos, title
8 and insurance company payments, payments made by borrowers, returned security deposits, servicer
9 advances paid by direct lenders, and interest collected on funds held in trust), that were obtained,
10 received, collected, or deposited in any account, on or after February 16, 2007, by any loan servicer,
11 sub-servicer, and agent or affiliate thereof in connection with any loan made by USA Commercial
12 Mortgage Company. Such forensic accounting may be undertaken by independent persons to be
13 chosen by Movants in their sole and unfettered discretion. It is agreed that such independent persons
14 include, but are not limited to, direct lenders who are certified public accountants and have no legal
15 interest in the loans or accounts for which they are conducting such forensic accounting.

16
17 7. Within five days of the entry of this Order, the below listed Respondents shall
18 provide Movants with a full disclosure of any and all documents in their possession, custody, or
19 control (subject to the attorney-client privilege) that will enable Movants to undertake such a
20 comprehensive forensic accounting, including, but not limited to, transactional source documents
21 (e.g., closing statements, checks, etc.). The below listed Respondents are required to fully cooperate
22 with Movants in this regard, and the obligation to make a full disclosure is to be broadly and
23 liberally construed such that any and all documents that may inform such forensic accounting shall
24 be produced to Movants. The duties to cooperate and make full disclosure are material terms of the
25 settlement, the breach of which will enable the direct lenders to retain all the monies wired to Bickel
26 & Brewer's IOLTA account pursuant to this settlement but the settlement will be rendered null and
27 void. To the extent that the below listed Respondents claim that the attorney-client privilege
28

1 precludes the disclosure of any such documents, they shall also provide Movants with a privilege log
2 identifying those documents within five days of the entry of this Order. To the extent that the below
3 listed Respondents claim that any such documents contain internal transactions wholly unrelated to
4 such forensic accounting, they may preserve the confidentiality of any such transactions by narrowly
5 redacting such documents. If the below listed Respondents assert the attorney-client privilege and/or
6 confidentiality with respect to any such documents and Movants contest any such assertion, then the
7 below listed Respondents shall provide the contested documents to the Court to conduct an in
8 camera review of whether those documents shall be provided to, or unredacted for, Movants.

10 8. Upon the completion of such forensic accounting with respect to the other monies at
11 issue in Doc. #1811 (*i.e.*, the \$315,093.36 disbursed “Per Account Reconciliation (from ARC
12 Collection Account),” the \$100.99 disbursed to “Reimburse Post-Acquisition Base Servicing Fee,”
13 and the \$20.51 disbursed to “Clean-Up Acct, Remittance of Float”), Movants shall provide the Court
14 with a report containing an analysis thereof. The below listed Respondents agree that they will not
15 contest, and will abide by, that analysis. If that analysis reflects that all those monies are to be paid
16 to direct lenders, then Movants and the below listed Respondents agree to promptly file with the
17 Court a stipulation and order authorizing Bickel & Brewer to disburse those monies from its IOLTA
18 account to the direct lenders to whom such monies are owed. If, however, that analysis reflects that
19 certain of those monies may not be owed to the direct lenders, then Movants and the below listed
20 Respondents agree to promptly file with the Court a stipulation and order (i) authorizing Bickel &
21 Brewer to disburse those monies from its IOLTA account to the direct lenders to whom such monies
22 are owed, and (ii) requesting the Court to resolve to whom such disputed monies will be paid.

25 9. Upon the completion of such forensic accounting with respect to any other loan or
26 account that is not at issue in the Motions, Movants shall provide the Court with a report containing
27 an analysis thereof. If that analysis reflects that other monies (in addition to those at issue in the
28 Motions) are owed, but were not paid, to the direct lenders, then Movants may file a motion with the

1 Court (asserting any claims except for contempt of court) to recover those monies. The below listed
2 Respondents may contest any such motion. The Court shall retain exclusive jurisdiction to consider
3 any such motion, which shall not be barred by any statutes of limitations that had not lapsed as of
4 March 1, 2011.

5
6 10. Pursuant to its statutory obligation to report any known or suspected criminal
7 offenses, the Court transfers that obligation to Movants, who agree not to make any such report to
8 the Nevada Attorney General in connection with the Motions and the below listed Respondents.

9 11. Movants and the below listed Respondents agree that the trustee for Asset Resolution
10 LLC is entitled to pursue and retain the \$375,112.43 of Anchor B funds that was transferred to
11 Greenberg Traurig, LLP on October 1, 2009.

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13
14 APPROVED AS TO FORM AND CONTENT:

15 /s/ Janet L. Chubb
16 BICKEL & BREWER
17 ARMSTRONG TEASDALE
18 LAW OFFICE OF LISA A. RASMUSSEN

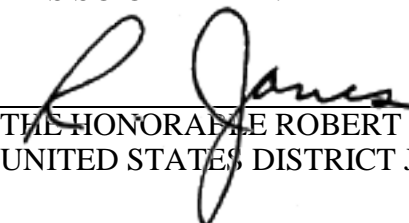
19 Attorneys for Movants

20 ***NOTE: This proposed order was sent to Mr. Majorie and Ms. Hill on 2/24/11 for comments or
21 Objections thereto. No response was ever received.***

22 THE MAJORIE FIRM, LTD.
23 LAW OFFICE OF MELANIE HILL
24 Attorneys for Respondents Silar Advisors, LP,
25 Robert Leeds, Jay Gracin, Hin King Tai,
26 Choi ___, and Sara Pfrommer

27 Dated: This 9th of August, 2011.

28 IT IS SO ORDERED:



THE HONORABLE ROBERT C. JONES
UNITED STATES DISTRICT JUDGE